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EXAMINER ROSEN, ELIZABETH H				
ART UNIT 3692		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patatty@ipmvs.com

Office Action Summary

Application No.

10/791,518

Applicant(s)

BRADLEY ET AL.

Examiner

Elizabeth H. Rosen

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46, 47, 50-54 and 63-87 is/are pending in the application.
- 4a) Of the above claim(s) 85-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46, 47, 50-54, 63-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is in reply to the Amendment and Response filed on April 30, 2009.
2. Claims 1-45, 48, 49, and 55-62 have been canceled.
3. Claims 46, 47, 50, 51, 65, and 66 have been amended.
4. Claims 69-87 have been added.
5. Claims 46, 47, 50-54, 63-87 are currently pending.

Restriction by Original Presentation

6. Newly submitted Claims 85-87 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The previously presented independent claims relate to reading data from a tag in order to audit items subject to a finance agreement. Claims 85-87 relate to initiating a remotely controlled machine audit. This is substantially different from the previously pending claims.
7. Since Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, Claims 85-87 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.
8. Furthermore, Examiner believes that Claims 46, 65, and 66 are meant to be distinct inventions. However, because they were claimed similarly, a restriction of these claims has not been required. If further amendments distinguish the inventions of these claims, a restriction will be proper.

Response to Arguments

9. Examiner would like to point out that the Supreme Court in *KSR International Co. v. Teleflex Inc.* described seven rationales to support rejections under 35 U.S.C. 103:
 - Combining prior art elements according to known methods to yield predictable results;
 - Simple substitution of one known element for another to obtain predictable results;
 - Use of known technique to improve similar devices (methods, or products) in the same way;

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- Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- "Obvious to try" –choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; and
- Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. The prior art reference (or references when combined) need not teach or suggest all the claim limitations; however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The "mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness." see *Dann v. Johnson*, 425 U.S. 219, 230 (1976).

10. With regard to the rejections under 35 U.S.C. 101, the claims remain rejected. To satisfy the requirements of this statute, the steps must explicitly state that they are performed by a computer or machine. For example, in the limitation of "requiring the second party to use a machine to electronically read encrypted data," the claim does not require the step of reading the encrypted data. Rather, the step is "requiring the second party" to perform an action. Therefore, the requiring would have to be performed by a computer or machine. Furthermore, merely using a computer or machine is insufficient. There must be steps that are performed by a computer/processor or machine.

11. With regard to the added feature in Claim 46 of "self-audit," Applicant's arguments are moot because there is a new ground of rejection. Claims 65 and 55 do not require that the second party do the audit.

12. Examiner would also like to point out that the preamble is not given patentable weight. Therefore, if Applicant intends features within the preamble to be part of the claimed invention, they should be added as limitations.

13. Applicant should refer to Examiner's previous Response to Arguments which addresses obviousness.

Claim Rejections - 35 USC § 101

14. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

15. **Claims 46, 47, 50-54 and 63-84** are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

16. An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

17. Here, Applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, these claims are non-statutory since they may be performed within the human mind.

18. The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.

Claim Objections

19. Claims 69 and 73 are objected to because of the following informalities: These claims are duplicates. Appropriate correction is required.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art

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are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

21. **Claims 46, 47, 50, 51, and 63** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Capazario** et al., U.S. Patent Application Publication Number 2003/0154141 A1, and further in view of **Rudolph** et al., U.S. Patent Application Publication Number 2002/0005774 A1.

Claim 46:

Carmichael discloses the limitations of:

- notifying the second party of [an audit] of the asset (see at least **Carmichael**, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30 days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'")).
- determining that the second party is complying or not complying with the finance agreement based on the audit information (see at least **Carmichael**, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30 days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'")).

Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

- requiring the second party to use a machine to electronically read [data] from at least one identification tag associated with the self-audit (see at least **Mercer**, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0033; Paragraph 0045; and Paragraph 0046).
- requiring the second party to send audit information based on the encrypted data to the first party (see at least **Mercer**, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate **Mercer's** method of using RFID tags to track vehicles with **Carmichael's** method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been

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removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Carmichael does not explicitly disclose, but **Capazario**, however, does disclose:

- self-audit (see at least Capazario, Paragraph 0047 ("After the first four (4) weeks, stores that scored high in the rankings are left to self-audit their own management system.")).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Capazario's method of self-auditing with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of increasing efficiency and decreasing expenses for the first party by receiving audit information from the second party as opposed to using its own resources to gather the audit information.

Carmichael does not explicitly disclose, but **Rudolph**, however, does disclose:

- encrypted data (see at least Rudolph, Paragraph 0023 (The RFID tag contains an encrypted code.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Capazario's method of using encryption with an RFID tag with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making the data more secure.

Claim 47:

Carmichael further discloses:

- wherein the asset associated with the finance agreement is selected from the set consisting of a car, a truck, a recreational vehicle, a boat, a motorcycle, construction equipment, farm equipment, manufacturing equipment, containerized freight, art, an antique, and a collectible (see at least Carmichael, Page 1, Paragraph 1 ("Floorplanning is the financing of dealer or distributor inventory by either a finance company or a bank. This type of inventory financing has been in existence for many years, particularly in the automotive [industry].")).

Claim 50:

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Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

- wherein the at least one identification tag includes a radio frequency identification tag (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0046; Paragraph 0057; and Paragraph 0058).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 51:

Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

- wherein the at least one identification tag includes a bar code (see at least Mercer, Paragraph 0046 ("The handheld computing device 102 is preferably a pocket PC containing a bar code scanner/reader and an RFID tag reader."); Paragraph 0050; and Paragraph 0056).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using a bar code on identification tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 63:

Claim 63 is rejected using the same rationale that was used for the rejection of Claim 51.

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22. **Claim 52** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Capazario** et al., U.S. Patent Application Publication Number 2003/0154141 A1, and further in view of **Rudolph** et al., U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of **Hull** et al., U.S. Patent Application Publication Number 2004/0041707 A1.

Claim 52:

Carmichael does not explicitly disclose, but **Hull**, however, does disclose:

- wherein the audit information comprises a hash (see at least Hull, Paragraph 0057 (A hash code is incorporated in a RFID tag.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Hull's method of using RFID tags with a hash code to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

23. **Claims 53, 54, and 64** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Capazario** et al., U.S. Patent Application Publication Number 2003/0154141 A1, and further in view of **Rudolph** et al., U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of **Adams** et al., U.S. Patent Application Publication Number 2003/0031819 A1.

Claim 53:

Carmichael does not explicitly disclose, but **Adams**, however, does disclose:

- wherein each of the at least one identification tag is fraud resistant (see at least Adams, Paragraph 0005).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Adams' method of using fraud resistant RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has

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been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender. Furthermore, it would be obvious to make the tags tamper proof in order to prevent fraud such as the removal of the tag from the vehicle and making it appear that the vehicle has not been sold and is still located at the dealership.

Claim 54:

Carmichael does not explicitly disclose, but Adams, however, does disclose:

- wherein each of the at least one identification tag is self-destructing (see at least Adams, Paragraph 0005).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Adams' method of using fraud resistant RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender. Furthermore, it would be obvious to make the tags tamper proof in order to prevent fraud such as the removal of the tag from the vehicle and making it appear that the vehicle has not been sold and is still located at the dealership.

Claim 64:

Claim 64 is rejected using the same rationale that was used for the rejection of Claim 53.

24. **Claims 65, 66, 68, 70-72, and 77-79** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Rudolph** et al., U.S. Patent Application Publication Number 2002/0005774 A1.

Claim 65:

Carmichael discloses the limitations of:

- determining compliance or non-compliance with the agreement based on the audit information (see at least Carmichael, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30

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days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'").

Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

- initiating the self-audit by requesting an electronic reading by a machine of at least one identification tag containing [data] associated with an asset (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0033; Paragraph 0045; and Paragraph 0046).
- receiving audit information based on the electronic reading by a machine of the at least one identification tag (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Carmichael does not explicitly disclose, but **Rudolph**, however, does disclose:

- encrypted data (see at least Rudolph, Paragraph 0023 (The RFID tag contains an encrypted code.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Capazario's method of using encryption with an RFID tag with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making the data more secure.

Claim 66:

Carmichael discloses the limitations of:

- determining compliance or non-compliance with the agreement based on the audit information (see at least Carmichael, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30

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days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'").

Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

- initiating the self-audit by requesting an electronic reading by a machine of at least one identification tag containing [data] associated with an asset (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0033; Paragraph 0045; and Paragraph 0046).
- receiving audit information, the audit information including data based on the electronic reading by the machine of the at least one identification tag containing the encrypted data in combination with data associated with the self-audit or data associated with the asset (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Carmichael does not explicitly disclose, but **Rudolph**, however, does disclose:

- encrypted data (see at least Rudolph, Paragraph 0023 (The RFID tag contains an encrypted code.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Capazario's method of using encryption with an RFID tag with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making the data more secure.

Claim 68:

Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

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- wherein the data associated with the asset includes a geographic position associated with the asset (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicle locations with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership (i.e., is at a location other than the dealership), then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 70:

Carmichael further discloses:

- wherein the asset associated with the finance agreement is selected from the set consisting of a car, a truck, a recreational vehicle, a boat, a motorcycle, construction equipment, farm equipment, manufacturing equipment, containerized freight, art, an antique, and a collectible (see at least Carmichael, Page 1, Paragraph 1 ("Floorplanning is the financing of dealer or distributor inventory by either a finance company or a bank. This type of inventory financing has been in existence for many years, particularly in the automotive [industry].")).

Claim 71:

Carmichael does not explicitly disclose, but Mercer, however, does disclose:

- wherein the at least one identification tag includes a radio frequency identification tag (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0046; Paragraph 0057; and Paragraph 0058).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a

dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 72:

Carmichael does not explicitly disclose, but **Mercer**, however, does disclose:

- wherein the at least one identification tag includes a bar code (see at least **Mercer**, Paragraph 0046 ("The handheld computing device 102 is preferably a pocket PC containing a bar code scanner/reader and an RFID tag reader."); Paragraph 0050; and Paragraph 0056).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate **Mercer's** method of using a bar code on identification tags to track vehicles with **Carmichael's** method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 77:

Claim 77 is rejected using the same rationale that was used for the rejection of Claim 70.

Claim 78:

Claim 78 is rejected using the same rationale that was used for the rejection of Claim 71.

Claim 79:

Claim 79 is rejected using the same rationale that was used for the rejection of Claim 72.

25. **Claim 67** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer et al.**, U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Rudolph et al.**, U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of **Tallman et al.**, U.S. Patent Number 5,708,417.

Claim 67:

Carmichael does not explicitly disclose, but **Tallman**, however, does disclose:

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- wherein the data associated with the self-audit includes an audit code (see at least Tallman, column 2, lines 20-30 and column 5, lines 49-50 ("The computer determines the module identification number from the identification code in the receiver signal 90.")).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Tallman's method of transmitting a identification code when identifying a location of a vehicle with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership (i.e., is at a location other than the dealership), then that signifies that the vehicle has been sold and a payment is due to the lender. In order to determine the location of a vehicle, there would have to be some way to identify the vehicle, such as an identification code or audit code.

26. **Claims 69, 73, and 80** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Rudolph** et al., U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of **Hull** et al., U.S. Patent Application Publication Number 2004/0041707 A1.

Claim 69:

Carmichael does not explicitly disclose, but **Hull**, however, does disclose:

- wherein the audit information comprises a hash (see at least Hull, Paragraph 0057 (A hash code is incorporated in a RFID tag.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Hull's method of using RFID tags with a hash code to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 73:

Claim 73 is rejected using the same rationale that was used for the rejection of Claim 69.

Claim 80:

Claim 80 is rejected using the same rationale that was used for the rejection of Claim 69.

27. **Claims 74, 75, 81, and 82** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Rudolph** et al., U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of **Adams** et al., U.S. Patent Application Publication Number 2003/0031819 A1.

Claim 74:

Carmichael does not explicitly disclose, but **Adams**, however, does disclose:

- wherein each of the at least one identification tag is fraud resistant (see at least **Adams**, Paragraph 0005).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate **Adams'** method of using fraud resistant RFID tags to track vehicles with **Carmichael's** method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender. Furthermore, it would be obvious to make the tags tamper proof in order to prevent fraud such as the removal of the tag from the vehicle and making it appear that the vehicle has not been sold and is still located at the dealership.

Claim 75:

Carmichael does not explicitly disclose, but **Adams**, however, does disclose:

- wherein each of the at least one identification tag is self-destructing (see at least **Adams**, Paragraph 0005).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate **Adams'** method of using fraud resistant RFID tags to track vehicles with **Carmichael's** method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has

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been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender. Furthermore, it would be obvious to make the tags tamper proof in order to prevent fraud such as the removal of the tag from the vehicle and making it appear that the vehicle has not been sold and is still located at the dealership.

Claim 81:

Claim 81 is rejected using the same rationale that was used for the rejection of Claim 74.

Claim 82:

Claim 82 is rejected using the same rationale that was used for the rejection of Claim 75.

28. **Claims 76 and 83** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer et al.**, U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Rudolph et al.**, U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of **Katagishi et al.**, U.S. Patent Application Publication Number 2003/0120745 A1.

Claim 76:

Carmichael does not explicitly disclose, but **Katagishi**, however, does disclose:

- wherein the machine used for the electronic reading is integrated in a cell phone (see at least Katagishi, Abstract ("the user operates a cellular phone to read information from the RFID"); Paragraph 0055; Paragraph 0058).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Katagishi's method of using a cellular phone to read an RFID tag with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of using a device that most people carry with them to read the tags instead of carrying a second device.

Claim 83:

Claim 83 is rejected using the same rationale that was used for the rejection of Claim 76.

29. **Claim 84** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer et al.**, U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Capazario et al.**, U.S. Patent Application Publication Number 2003/0154141 A1, and further in view of

Rudolph et al., U.S. Patent Application Publication Number 2002/0005774 A1, and further in view of Katagishi et al., U.S. Patent Application Publication Number 2003/0120745 A1.

Claim 84:

Carmichael does not explicitly disclose, but Katagishi, however, does disclose:

- wherein the machine used for the electronic reading is integrated in a cell phone (see at least Katagishi, Abstract ("the user operates a cellular phone to read information from the RFID"); Paragraph 0055; Paragraph 0058).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Katagishi's method of using a cellular phone to read an RFID tag with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of using a device that most people carry with them to read the tags instead of carrying a second device.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Rosen whose telephone number is 571-270-1850. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm, ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached at 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either

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Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elizabeth H Rosen

Examiner, Art Unit 3692

/Nga B. Nguyen/

Primary Examiner, Art Unit 3692